IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 4013 of 2007(C)

PETITIONER:

ABDUL VAHID,
KOTTILIL VEEDU, VADKKEVILA, KOLLAM.

BY ADV. SRI.S.A. RAZZAK

RESPONDENTS:
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1. **THE DEPUTY TAHSILDAR (R.R),**
   TALUK OFFICE, KOLLAM.

2. **THE COMMERCIAL TAX OFFICER,**
   II CIRCLE, COMMERCIAL TAXES, KOLLAM.

3. **A.J. NIZAR,**
   SAJ TRADING COMPANY, NIZAR MANZIL, MANAKKADU,
   VADAKKEVILA P.O., KOLLAM.

BY SR.GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.4013/2007 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF DEATH CERTIFICATE DTD. 20/03/2006.**

EXT.P2: **COPY OF CERTIFICATE DTD. 29/08/2001 ISSUED TO R3 FOR HIS REGISTRATION.**

EXT.P3: **COPY OF BOND & GUARANTEE IN FORM NO.6 EXECUTED ON 17/03/1989.**

EXT.P4: **COPY OF ATTACHMENT NOTICE DTD. 28/02/2005 ISSUED TO R3.**

EXT.P5: **COPY OF NOTICE NO.D12-3895/06 DTD. 27/11/2006 ISSUED TO PETITIONER UNDER REVENUE RECOVERY ACT.**

RESPONDENT'S ANNEXURES:

ANNEXURE A: **COPY OF NOTICE DTD. 15/03/2007 TO VILLAGE OFFICER TO RECOVER RS.100,000/-**

ANNEXURE B: **COPY OF APPLICATION DTD. 19/03/2007 FOR INFORMATION.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 4013 OF 2007-C

JUDGMENT

The petitioner was one of the sureties for the 3rd respondent, when the said respondent obtained registration under the K.G.S.T. Act. Since the 3rd respondent has defaulted to pay the amounts due to the State, revenue recovery steps have been taken against the petitioner also, as he is one of the sureties. The amount secured by the bond is Rs.One lakh. The petitioner submits, the other surety was the father of the 3rd respondent, who is no more. The total amount now sought to be recovered from the 3rd respondent, including interest, will come to Rs.23,17,310/-. This Writ Petition is filed, challenging the recovery steps taken against him. According to the petitioner, he is liable to pay only one-half of the tax assessed on the 3rd respondent during the relevant year of registration or the sum assured under Ext.P3 security bond, whichever is less. In support of that submission, the petitioner relies on Rule 6 of the K.G.S.T. Rules and also the surety bond executed in Form No.6 under the said Rule.

2. I heard the learned Government Pleader for the respondents also. The relevant portion of Rule 6 reads as follows:

"6. Security to be furnished by certain dealers:--(1) Where the assessing authority is of the opinion that a dealer who has applied for registration or has been registered or has applied for renewal of registration should furnish security or additional security for the proper payment of the tax payable by him, the said authority, may direct him in writing to furnish, within such time as may be fixed by the said authority security for an amount, not exceeding one half of the tax payable on the turnover of the dealer for the years as estimated by it or three months, compounded amount in the case of dealers who have opted to pay tax under Section 7. In making such estimate the said authority shall take into account the taxable turnover of the dealer, if any, during the preceding years, the trend of business at the time the estimate is made, the nature of the goods dealt in by him and such other factors as may, in the opinion of the said authority, assist it in making a proper estimate.

(2) Such security may be furnished by the dealer in any of the following ways, namely:

(a) by depositing as security in the Government Treasury the amount fixed by the said authority, or

(b) by depositing with the said authority Government securities for the amount fixed by the said authority; or

(c) by depositing security amount in the Post Office Saving Bank and pledging the Pass book to and depositing it with the said authority; or

(d) by furnishing to the said authority a guarantee from a Bank, approved in this behalf by the said authority, agreeing to pay to the State Government, on demand, the amount of security fixed by the said authority; or

(e) by furnishing two sureties acceptable to the said authority by executing a security bond for such amount in Form 6,

(f) by a bond prescribed under rule 42 for the amount fixed by the said authority in Form No.39 duly registered along with title, possession and valuation certificates obtained from the Tahsildar concerned and the value of the property

shall not be lower than the amount, shown in the bond.

Explanation:--In the case of security furnished in Form No.6, surety must be solvent enough for the amount assured.

(3) The security furnished shall be maintained in full so long as the registration certificate continues to be in force and may in the event of default of payment of any tax be liable to adjustment towards such tax after due intimation."

The learned counsel for the petitioner relying on the above quoted Rule, mainly contended that the petitioner is liable to pay only Rs.One lakh or 50% of the tax due from the 3rd respondent in the year of registration, whichever is less.

3. Going by the above quoted Rule, I feel that the said contention of the learned counsel for the petitioner is plainly untenable. The mention made in Sub-Rule (1) of Rule 6 regarding the amount, is a guideline to the registering authority to fix the security amount, which should be taken from the dealer seeking registration. The petitioner has executed Ext.P3 bond, under which he has undertaken to pay Rs.One lakh. The said security bond will remain in force as long as the registration certificate is in force, by virtue of Sub-Rule (3) of Rule 6. Therefore, the petitioner is bound to pay the amount covered by Ext.P3. So, his contention cannot be accepted. But, it is ordered that the maximum amount that could be recovered from the

petitioner will be limited to the amount covered by Ext.P3.

The Writ Petition is disposed of as above.

29th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/